

Testimony of Kevin Gover, Director
Smithsonian Institution
National Museum of the American Indian
Before the United States Senate Committee on Indian Affairs
June 16, 2011

Mr. Chairman and members of the Committee, I am Kevin Gover, director of the Smithsonian Institution's National Museum of the American Indian. I am here today on behalf of the Smithsonian Institution to share with you our record in implementing the repatriation provisions of the National Museum of the American Indian Act.

The Smithsonian Institution is home to two museums that possess collections of Native American materials. The National Museum of Natural History (NMNH) collections include collections of archaeological, ethnological, and physical anthropological materials. The National Museum of the American Indian (NMAI) holds archaeological and ethnological collections. The NMNH opened its doors in 1910. The NMAI was established by Congress in 1989 in the National Museum of the American Indian Act, and its Mall museum opened its doors in 2004. Both Smithsonian museums possess vast collections compiled largely in the 19th and early 20th centuries.

Collecting practices in those times were very different from our current collecting practices. Those old practices sometimes disregarded the values and sensibilities of the Native communities from which the materials originated. As a result, both collections contain materials that properly should reside in the Native communities from which they came. When Congress passed the NMAI Act in 1989, it directed the Smithsonian to undertake the repatriation of human remains and funerary objects. In 1996, Congress amended the NMAI Act to add sacred objects

and objects of cultural patrimony to the materials to be repatriated when requested by a tribe or eligible individual.

The Smithsonian has assumed the responsibility with considerable energy. In just over twenty years, the Smithsonian has offered for repatriation nearly 6,000 human remains, over 212,000 funerary objects, and over 1200 sacred objects and objects of cultural patrimony. For a variety of reasons ranging from the cultural to the practical, not all of these offers were accepted. Because of the vastness of the collections of the two museums, moreover, many remains and objects that might be repatriated are still in the collections despite the aggressive repatriation programs of the two museums.

As you know, the General Accountability Office (GAO) has completed a review of the Smithsonian's repatriation activities. We appreciate the GAO's work and the manner in which it was conducted, and recognize that the report raises worthy issues for the consideration of this Committee and the Smithsonian leadership.

Perhaps the most important issue presented by the GAO report involves the tension between the statutory objective of promptly returning eligible materials to requesting tribes and individuals on the one hand, and the statutory objective of returning eligible materials to the *correct* claimants on the other. As noted in the report, the NMAI Act requires the Smithsonian to consider the best available historical and scientific documentation in making its repatriation decisions. This requirement imposes a higher burden of proof on Smithsonian museums than is contemplated under the Native American Graves Protection and Repatriation Act (NAGPRA). It is a requirement both burdensome and necessary. The Smithsonian is committed to the advancement and diffusion of knowledge. Knowledge is the product of thorough research and

analysis. Such scholarship produces conclusions that are as accurate as practicable. In the context of our repatriation activities, this means that our decisions should correctly determine the cultural affiliation of human remains and objects to be repatriated.

Turning to the specific recommendations contained in the GAO report, we share the report's objective of maintaining an orderly, effective, and transparent program of repatriation. To this end, the Smithsonian will consider ways in which the role of Repatriation Review Committee could include some relationship with the repatriation program at the NMAI. Because, historically, the RRC has not been involved with the repatriation decisions rendered of the NMAI, the precise nature of the relationship will be the subject of further discussions with key stakeholders. The NMAI Board of Trustees brings the same scholarly credentials and cultural expertise to the task as the RRC. The NMAI Board of Trustees must by statute have a Native American majority; the Trustees collectively are knowledgeable of Native cultures and committed advocates of the preservation of Native culture. The Board plays the independent advocacy role that the Congress anticipated when it empowered the Board of Trustees with "sole authority" over the NMAI collections, subject to the general policies of the Smithsonian. Nonetheless, we recognize the benefit of working more closely with the Repatriation Review Committee and we are evaluating the most effective and efficient way to enable that

We agree with the GAO that a system of periodic reporting to Congress on the progress of the Smithsonian's repatriation activities should be established. By virtue of the GAO's report, we recognize that Congress is indeed interested in the scope of repatriation on a national scale and the Institution will develop a reporting mechanism through which the Secretary of the Smithsonian can provide to Congress a complete picture of its robust and successful repatriation program.

The Smithsonian also agrees with the GAO that the process of appealing repatriation decisions by the two museums should be changed. We note, though, how rare it has been for repatriation decisions by the museums to be challenged. Indeed , in over twenty years, there have been only two cases in which a Smithsonian museum's decision was challenged. The collegial processes pursued by both museums and the roles played by the RRC and the NMAI Board of Trustees in the process have resulted, in the overwhelming majority of cases, in the acceptance of the museums' decisions by those who have requested repatriations.

In the interest of transparency and consistency, we are examining different procedures for appeals. We agree with the GAO that the decision maker on an appeal from a museum's decision should not have been involved in the museum's decision. We will consider different options and establish a new process that has these characteristics.

We agree with the GAO that the Smithsonian should adopt and publish policies for the handling of culturally unaffiliated items in the collections. We note that the Smithsonian's obligations with regard to such items are different from those established in NAGPRA. We believe, therefore, that our policies should not necessarily be the same as those established by the Interior Department for NAGPRA institutions, and that such policies should be developed by the NMAI and NMNH in consultation with tribal governments. We will embark on such a consultation process promptly.

Thank you for the opportunity to testify, Mr. Chairman. I would be happy to answer any questions the Committee may have.